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SENATE BILL 1161

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BEN D. ALTAMIRANO

AN ACT

RELATING TO CORRECTIONS; REQUIRING THE CORRECTIONS DEPARTMENT TO CONTRACT WITH LEA COUNTY, GUADALUPE COUNTY AND CIBOLA COUNTY TO HOUSE INMATES IN COUNTY CORRECTIONAL FACILITIES; AUTHORIZING LOCAL PUBLIC BODIES TO CONTRACT WITH INDEPENDENT CONTRACTORS FOR THE OPERATION OR PROVISION AND OPERATION OF CORRECTIONAL FACILITIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] LEGISLATIVE FINDINGS--

PURPOSE. --The legislature finds that existing state correctional facilities are significantly overcrowded and insufficient to meet the anticipated growth in the number of inmates that will need to be housed in such facilities. The legislature further finds that this is not simply a future need but an emergency

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1 that must be addressed immediately. To meet this emergency,
2 this act requires that the corrections department contract with
3 counties for the provision of beds in existing correctional
4 facilities as well as in new county correctional facilities to
5 meet the urgent need to house a large number of adult inmates
6 now and in the near future in secure and appropriate facilities.

7 Section 2. Section 4-62-1 NMSA 1978 (being Laws 1992,
8 Chapter 95, Section 1, as amended) is amended to read:

9 "4-62-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF
10 REVENUES--LIMITATION ON TIME OF ISSUANCE.--

11 A. In addition to any other law authorizing a county
12 to issue revenue bonds, a county may issue revenue bonds
13 pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes
14 specified in this section. The term "pledged revenues", as used
15 in Chapter 4, Article 62 NMSA 1978, means the revenues, net
16 income or net revenues authorized to be pledged to the payment
17 of particular revenue bonds as specifically provided in
18 Subsections B through I of this section.

19 B. Gross receipts tax revenue bonds may be issued
20 for any one or more of the following purposes:

21 (1) constructing, purchasing, furnishing,
22 equipping, rehabilitating, making additions to or making
23 improvements to one or more public buildings or purchasing or
24 improving any ground relating thereto, including [~~but not~~
25 ~~necessarily limited to~~] acquiring and improving parking lots, or

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1 any combination of the foregoing;

2 (2) acquiring or improving county or public
3 parking lots, structures or facilities or any combination of the
4 foregoing;

5 (3) purchasing, acquiring or rehabilitating
6 firefighting equipment or any combination of the foregoing;

7 (4) acquiring, extending, enlarging, bettering,
8 repairing, otherwise improving or maintaining storm sewers and
9 other drainage improvements, sewers, sewage treatment plants or
10 water utilities, including but not limited to the acquisition of
11 rights of way and water and water rights, or any combination of
12 the foregoing;

13 (5) reconstructing, resurfacing, maintaining,
14 repairing or otherwise improving existing alleys, streets, roads
15 or bridges or any combination of the foregoing or laying off,
16 opening, constructing or otherwise acquiring new alleys,
17 streets, roads or bridges or any combination of the foregoing;
18 provided that any of the foregoing improvements may include but
19 are not limited to the acquisition of rights of way;

20 (6) purchasing, acquiring, constructing, making
21 additions to, enlarging, bettering, extending or equipping [any]
22 airport facilities or any combination of the foregoing,
23 including without limitation the acquisition of land, easements
24 or rights of way;

25 (7) purchasing or otherwise acquiring or

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1 clearing land or purchasing, otherwise acquiring and beautifying
2 land for open space;

3 (8) acquiring, constructing, purchasing,
4 equipping, furnishing, making additions to, renovating,
5 rehabilitating, beautifying or otherwise improving public parks,
6 public recreational buildings or other public recreational
7 facilities or any combination of the foregoing; or

8 (9) acquiring, constructing, extending,
9 enlarging, bettering, repairing or otherwise improving or
10 maintaining solid waste disposal equipment, equipment for
11 operation and maintenance of sanitary landfills, sanitary
12 landfills, solid waste facilities or any combination of the
13 foregoing.

14 A county may pledge irrevocably any or all of the revenue
15 from the first one-eighth of one percent increment of the county
16 gross receipts tax for payment of principal and interest due in
17 connection with, and other expenses related to, gross receipts
18 tax revenue bonds for any of the purposes authorized in this
19 section or specific purposes or for any area of county
20 government services. If the county gross receipts tax revenue
21 from the first one-eighth of one percent increment of the county
22 gross receipts tax is pledged for payment of principal and
23 interest as authorized by this subsection, the pledge shall
24 require the revenues received from that increment of the county
25 gross receipts tax to be deposited into a special bond fund for

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1 payment of the principal, interest and expenses. At the end of
2 each fiscal year, any money remaining in the special bond fund
3 after the annual obligations for the bonds are fully met may be
4 transferred to any other fund of the county.

5 C. Fire protection revenue bonds may be issued for
6 acquiring, extending, enlarging, bettering, repairing,
7 improving, constructing, purchasing, furnishing, equipping or
8 rehabilitating any independent fire district project or
9 facilities, including, where applicable, purchasing, otherwise
10 acquiring or improving the ground for the project or any
11 combination of such purposes. A county may pledge irrevocably
12 any or all of the county fire protection excise tax revenue for
13 payment of principal and interest due in connection with, and
14 other expenses related to, fire protection revenue bonds. These
15 bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as
16 "fire protection revenue bonds".

17 D. Environmental revenue bonds may be issued for the
18 acquisition and construction of solid waste facilities, water
19 facilities, wastewater facilities, sewer systems and related
20 facilities. A county may pledge irrevocably any or all of the
21 county environmental services gross receipts tax revenue for
22 payment of principal and interest due in connection with, and
23 other expenses related to, environmental revenue bonds. These
24 bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as
25 "environmental revenue bonds".

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1 E. Gasoline tax revenue bonds may be issued for the
2 acquisition of rights of way for and the construction,
3 reconstruction, resurfacing, maintenance, repair or other
4 improvement of county roads and bridges. A county may pledge
5 irrevocably any or all of the county gasoline tax revenue for
6 payment of principal and interest due in connection with, and
7 other expenses related to, county gasoline tax revenue bonds.
8 These bonds may be referred to in Chapter 4, Article 62 NMSA
9 1978 as "gasoline tax revenue bonds".

10 F. Utility revenue bonds or joint utility revenue
11 bonds may be issued for acquiring, extending, enlarging,
12 bettering, repairing or otherwise improving water facilities,
13 sewer facilities, gas facilities or electric facilities or for
14 any combination of the foregoing purposes. A county may pledge
15 irrevocably any or all of the net revenues from the operation of
16 the utility or joint utility for which the particular utility or
17 joint utility bonds are issued to the payment of principal and
18 interest due in connection with, and other expenses related to,
19 utility or joint utility revenue bonds. These bonds may be
20 referred to in Chapter 4, Article 62 NMSA 1978 as "utility
21 revenue bonds" or "joint utility revenue bonds".

22 G. Project revenue bonds may be issued for
23 acquiring, extending, enlarging, bettering, repairing,
24 improving, constructing, purchasing, furnishing, equipping or
25 rehabilitating any revenue-producing project, including, as

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1 applicable, purchasing, otherwise acquiring or improving the
2 ground therefor and including [~~but not limited to~~] acquiring and
3 improving parking lots, or may be issued for any combination of
4 the foregoing purposes. The county may pledge irrevocably any
5 or all of the net revenues from the operation of the
6 revenue-producing project for which the particular project
7 revenue bonds are issued to the payment of the interest on and
8 principal of the project revenue bonds. The net revenues of any
9 revenue-producing project may not be pledged to the project
10 revenue bonds issued for any other revenue-producing project
11 that is clearly unrelated in nature; but nothing in this
12 subsection prevents the pledge to any of the project revenue
13 bonds of any revenues received from any existing, future or
14 disconnected facilities and equipment that are related to and
15 that may constitute a part of the particular revenue-producing
16 project. [~~Any~~] A general determination by the governing body
17 that [~~any~~] facilities or equipment are reasonably related to and
18 [~~shall~~] constitute a part of a specified revenue-producing
19 project shall be conclusive if set forth in the proceedings
20 authorizing the project revenue bonds. As used in Chapter 4,
21 Article 62 NMSA 1978:

22 (1) "project revenue bonds" means the bonds
23 authorized in this subsection; [~~and~~]

24 (2) "project revenues" means the net revenues
25 of revenue-producing projects that may be pledged to project

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1 revenue bonds pursuant to this subsection; and

2 (3) "revenue-producing project" means any county-
3 owned self-liquidating project that furnishes public services to
4 a county and its residents or for the public benefit of the
5 residents of the state, including public buildings; facilities
6 and equipment for the collection or disposal of trash, refuse or
7 garbage; jails and correctional facilities; swimming pools; golf
8 courses and other recreational facilities; cemeteries or
9 mausoleums or both; airports; parking garages; and
10 transportation centers, which may include office facilities and
11 customary terminal facilities for airlines, trains, monorails,
12 subways and intercity and intracity buses and taxicabs; but
13 "revenue-producing project" does not include a county utility as
14 defined in Subsection K of this section.

15 H. Fire district revenue bonds may be issued for
16 acquiring, extending, enlarging, bettering, repairing,
17 improving, constructing, purchasing, furnishing, equipping and
18 rehabilitating any fire district project, including, where
19 applicable, purchasing, otherwise acquiring or improving the
20 ground therefor, or for any combination of the foregoing
21 purposes. The county may pledge irrevocably any or all of the
22 revenues received by the fire district from the fire protection
23 fund as provided in Sections 59A-53-1 through 59A-53-17 NMSA
24 1978 and any or all of the revenues provided for the operation
25 of the fire district project for which the particular bonds are

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1 issued to the payment of the interest on and principal of such
2 bonds. The revenues of [~~any~~] a fire district project shall not
3 be pledged to the bonds issued for [~~any~~] a fire district project
4 that clearly is unrelated in its purpose; but nothing in this
5 section shall prevent the pledge to any of such bonds of any
6 such revenues received from any existing, future or of
7 disconnected facilities and equipment that are related to and
8 that ~~may~~ constitute a part of the particular fire district
9 project. [~~Any~~] A general determination by the governing body of
10 the county that [~~any~~] facilities or equipment are reasonably
11 related to and [~~shall~~] constitute a part of a specified fire
12 district project shall be conclusive if set forth in the
13 proceedings authorizing [~~such~~] the fire district bonds.

14 I. Law enforcement protection revenue bonds ~~may~~ be
15 issued for the repair and purchase of law enforcement apparatus
16 and equipment that meet nationally recognized standards. The
17 county ~~may~~ pledge irrevocably any or all of the revenues
18 received by the county from the law enforcement protection fund
19 distributions pursuant to Sections 29-13-1 through 29-13-9 NMSA
20 1978 to the payment of the interest on and principal of the law
21 enforcement protection revenue bonds.

22 J. Except for the purpose of refunding previous
23 revenue bond issues, no county ~~may~~ sell revenue bonds payable
24 from pledged revenue after the expiration of two years from the
25 date of the ordinance authorizing the issuance of the bonds or,

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1 for bonds to be issued and sold to the New Mexico finance
2 authority as authorized in Subsection C of Section 4-62-4 NMSA
3 1978, after the expiration of two years from the date of the
4 resolution authorizing the issuance of the bonds. However, any
5 period of time during which a particular revenue bond issue is
6 in litigation shall not be counted in determining the expiration
7 date of that issue.

8 K. No bonds may be issued by a county, other than an
9 H class county, a class B county as defined in Section 4-36-8
10 NMSA 1978 or a class A county as described in Section 4-36-10
11 NMSA 1978, to acquire, equip, extend, enlarge, better, repair or
12 construct any utility unless the utility is regulated by the New
13 Mexico public utility commission pursuant to the Public Utility
14 Act and the issuance of the bonds is approved by the commission.
15 For purposes of Chapter 4, Article 62 NMSA 1978, a "utility"
16 includes [~~but is not limited to~~] any water, wastewater, sewer,
17 gas or electric utility or joint utility serving the public.
18 H class counties shall obtain New Mexico public utility
19 commission approvals required by Section 3-23-3 NMSA 1978.

20 L. Any law that imposes or authorizes the imposition
21 of a county gross receipts tax, a county environmental services
22 gross receipts tax, a county fire protection excise tax or the
23 gasoline tax, or that affects any of those taxes, shall not be
24 repealed or amended in such a manner as to impair any
25 outstanding revenue bonds that are issued pursuant to Chapter 4,

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1 Article 62 NMSA 1978 and that may be secured by a pledge of
2 those taxes unless the outstanding revenue bonds have been
3 discharged in full or provision has been fully made therefor.

4 M As used in this section:

5 (1) "county environmental services gross
6 receipts tax revenue" means the revenue from the county
7 environmental services gross receipts tax transferred to the
8 county pursuant to Section 7-1-6.13 NMSA 1978;

9 (2) "county fire protection excise tax revenue"
10 means the revenue from the county fire protection excise tax
11 transferred to the county pursuant to Section 7-1-6.13 NMSA
12 1978;

13 (3) "county gross receipts tax revenue" means
14 the revenue attributable to the first one-eighth of one percent
15 increment of the county gross receipts tax transferred to the
16 county pursuant to Section 7-1-6.13 NMSA 1978 and any
17 distribution related to the first one-eighth of one percent made
18 pursuant to Section 7-1-6.16 NMSA 1978;

19 (4) "gasoline tax revenue" means the revenue
20 from that portion of the gasoline tax distributed to the county
21 pursuant to Sections 7-1-6.9 and 7-1-6.26 NMSA 1978; and

22 (5) "public building" includes [~~but is not~~
23 ~~limited to~~] fire stations, police buildings, jails, correctional
24 facilities, libraries, museums, auditoriums, convention halls,
25 hospitals, buildings for administrative offices, courthouses and

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1 garages for housing, repairing and maintaining county vehicles
2 and equipment.

3 N. As used in Chapter 4, Article 62 NMSA 1978, the
4 term "bond" means any obligation of a county issued under
5 Chapter 4, Article 62 NMSA 1978, whether designated as a bond,
6 note, loan, warrant, debenture, lease-purchase agreement or
7 other instrument evidencing an obligation of a county to make
8 payments. "

9 Section 3. Section 13-1-98 NMSA 1978 (being Laws 1984,
10 Chapter 65, Section 71, as amended) is amended to read:

11 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --The
12 provisions of the Procurement Code shall not apply to:

13 A. procurement of items of tangible personal
14 property or services by a state agency or a local public body
15 from a state agency, a local public body or external procurement
16 unit except as otherwise provided in Sections 13-1-135 through
17 13-1-137 NMSA 1978;

18 B. procurement of tangible personal property or
19 services for the governor's mansion and grounds;

20 C. printing and duplicating contracts involving
21 materials [~~which~~] that are required to be filed in connection
22 with proceedings before administrative agencies or state or
23 federal courts;

24 D. purchases of publicly provided or publicly
25 regulated gas, electricity, water, sewer and refuse collection

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1 services;

2 E. purchases of books and periodicals from the
3 publishers or copyright holders thereof;

4 F. travel or shipping by common carrier or by
5 private conveyance or to meals and lodging;

6 G. purchase of livestock at auction rings or to the
7 procurement of animals to be used for research and
8 experimentation or exhibit;

9 H. contracts with businesses for public school
10 transportation services;

11 I. procurement of tangible personal property or
12 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
13 by the corrections industries division of the corrections
14 department pursuant to regulations adopted by the corrections
15 [~~industries~~] commission, which shall be reviewed by the
16 purchasing division of the general services department prior to
17 adoption;

18 J. minor purchases consisting of magazine
19 subscriptions, conference registration fees and other similar
20 purchases where prepayments are required;

21 K. municipalities having adopted home rule charters
22 and having enacted their own purchasing ordinances;

23 L. the issuance, sale and delivery of public
24 securities pursuant to the applicable authorizing statute, with
25 the exception of bond attorneys and general financial

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1 consultants;

2 M contracts entered into by a local public body
3 with a private independent contractor for the operation, or
4 provision and operation, of a jail or correctional facility
5 pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

6 N. contracts for maintenance of grounds and
7 facilities at highway rest stops and other employment
8 opportunities, excluding those intended for the direct care and
9 support of persons with handicaps, entered into by state
10 agencies with private, nonprofit, independent contractors who
11 provide services to persons with handicaps;

12 O. contracts and expenditures for services to be
13 paid or compensated by money or other property transferred to
14 New Mexico law enforcement agencies by the United States
15 department of justice drug enforcement administration;

16 P. contracts for retirement and other benefits
17 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978; and

18 Q. contracts with professional entertainers. "

19 Section 4. A new section of Chapter 33, Article 1 NMSA
20 1978 is enacted to read:

21 " [NEW MATERIAL] CORRECTIONS DEPARTMENT-- CONTRACTS-- COUNTY
22 CORRECTIONAL FACILITIES. --

23 A. The corrections department shall contract with
24 Lea county, Guadalupe county and Cibola county to house inmates
25 in correctional facilities owned and operated by the county.

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1 The contracts shall provide for housing inmates in:

2 (1) a correctional facility in Guadalupe county
3 with an initial capacity of eight hundred inmates and provision
4 for expansion to one thousand two hundred inmates; and

5 (2) a correctional facility in Lea county with
6 an initial capacity of one thousand six hundred inmates
7 provision for expansion to two thousand two hundred inmates; and

8 (3) up to four hundred inmates in the Cibola
9 county correctional center.

10 B. Contracts entered into pursuant to Subsection A
11 of this section shall include such terms and conditions as the
12 corrections department may require after consultation with the
13 general services department, provided that the terms and
14 conditions shall include provisions:

15 (1) setting comprehensive standards for
16 conditions of incarceration;

17 (2) requiring that the correctional facility
18 and operation of the facility meet all applicable correctional
19 standards and any court orders or consent decrees;

20 (3) providing for payments under the contract
21 on a use and per diem per inmate basis;

22 (4) that the employees performing the functions
23 of correctional officers, whether employed by the county or by
24 an independent contractor, shall be deemed to be correctional
25 officers for the purposes of Sections 33-1-10 and 33-1-11 NMSA

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1 1978;

2 (5) that continuation of the contract is
3 subject to annual appropriation or other availability of funds;
4 and

5 (6) that compliance with the contract shall be
6 monitored by the corrections department and the contract may be
7 terminated for noncompliance.

8 C. A contract entered into pursuant to Subsection A
9 of this section may provide that the corrections department may
10 purchase the correctional facility from the county at any time
11 after five years from the date of initial operation of the
12 facility.

13 D. The corrections department shall not enter into
14 contracts with Lea county and Guadalupe county pursuant to
15 Subsection A of this section unless each contract requires that
16 the facilities under contract shall not be constructed unless
17 both facilities are constructed, as nearly as practicable,
18 simultaneously. "

19 Section 5. Section 33-1-17 NMSA 1978 (being Laws 1985,
20 Chapter 149, Section 1, as amended) is amended to read:

21 "33-1-17. PRIVATE CONTRACT. --

22 A. The corrections department may contract for the
23 operation of any adult female facility or for housing adult
24 female inmates in a private facility with a person or entity in
25 the business of providing correctional or jail services to

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1 government entities.

2 B. The corrections department may contract with a
3 person or entity in the business of providing correctional or
4 jail services to government entities for [~~(1) a correctional~~
5 ~~facility in Guadalupe county of not less than five hundred fifty~~
6 ~~and not more than two thousand two hundred beds;~~

7 ~~(2) a correctional facility in Lea, Chaves or~~
8 ~~Santa Fe county of not less than one thousand two hundred and~~
9 ~~not more than two thousand two hundred beds;~~

10 ~~(3) design and construction of a support~~
11 ~~services building, a laundry and an infirmary at the~~
12 ~~penitentiary of New Mexico in Santa Fe; or~~

13 ~~(4)]~~ construction of a public facility to house
14 a special incarceration alternative program for adult male and
15 adult female felony offenders.

16 [~~C. The authorization in Subsection B of this~~
17 ~~section for a correctional facility in Guadalupe county and a~~
18 ~~correctional facility in Lea, Chaves or Santa Fe county is~~
19 ~~contingent upon construction of both facilities, so that one of~~
20 ~~the facilities shall not be constructed unless both of the~~
21 ~~facilities are constructed, as nearly as practicable,~~
22 ~~simultaneously.~~

23 ~~D.]~~ C. The corrections department shall solicit
24 proposals and award any contract under this section in
25 accordance with the provisions of the Procurement Code. The

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1 contract shall include such terms and conditions as the
2 corrections department may require after consultation with the
3 general services department; provided that the terms and
4 conditions shall include provisions:

5 (1) setting forth comprehensive standards for
6 conditions of incarceration;

7 (2) that the contractor assumes all liability
8 caused by or arising out of all aspects of the provision or
9 operation of the facility;

10 (3) for liability insurance or other proof of
11 financial responsibility acceptable to the general services
12 department covering the contractor and its officers, employees
13 and agents in an amount sufficient to cover all liability caused
14 by or arising out of all aspects of the provision or operation
15 of the facility;

16 (4) for termination for cause upon ninety days'
17 notice to the contractor for failure to meet contract provisions
18 when such failure seriously affects the availability or
19 operation of the facility;

20 (5) that venue for the enforcement of the
21 contract shall be in the district court for Santa Fe county;

22 (6) that continuation of the contract is
23 subject to the availability of funds; and

24 (7) that compliance with the contract shall be
25 monitored by the corrections department and the contract may be

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1 terminated for noncompliance.

2 [E-] D. When the contractor begins operation of a
3 facility for which private contractor operation is authorized,
4 his employees performing the functions of correctional officers
5 shall be deemed correctional officers for the purposes of
6 Sections 33-1-10 and 33-1-11 NMSA 1978 but for no other purpose
7 of state law, unless specifically stated.

8 [F-] E. Any contract awarded pursuant to this
9 section may include terms to provide for the renovation of the
10 facility or for the construction of new buildings. Work
11 performed pursuant to such terms and conditions shall not be
12 considered a capital project as defined in Section 15-3-23.3
13 NMSA 1978 or a state public works project as defined in Section
14 13-1-91 NMSA 1978 nor shall it be subject to the requirements of
15 Section 13-1-150 NMSA 1978 or of the Capital Program Act, review
16 by the staff architect of the property control division of the
17 general services department pursuant to Section 15-3-20 NMSA
18 1978 or regulation by the director of that division pursuant to
19 Section 15-3-11 NMSA 1978.

20 [G-] F. Any contract entered into by the corrections
21 department with a private contractor to operate an existing
22 facility shall include a provision securing the right of all
23 persons employed by that facility prior to the effective date of
24 that contract to be employed by that contractor in any position
25 for which they qualify before that position is offered to any

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1 person not employed by that facility prior to that date."

2 Section 6. Section 33-1-18 NMSA 1978 (being Laws 1990
3 (1st. S.S.), Chapter 5, Section 1, as amended) is amended to
4 read:

5 "33-1-18. [FUNDS] FUND CREATED. -- There [are] is created in
6 the state treasury a special [funds] fund to be known as the
7 "corrections department building fund" [~~the "Guadalupe county~~
8 ~~prison fund" and the "New Mexico prison fund"~~]. The [funds]
9 fund shall consist of money appropriated by the legislature,
10 from year to year, from the income or distributions of the land
11 grant permanent [~~fund and land income~~] funds of which the
12 penitentiary of New Mexico is the beneficiary [~~and any other~~
13 ~~revenues that are appropriated to the funds, other than revenues~~
14 ~~derived from property taxes or general fund revenues~~]. Income
15 from investment of [~~each special~~] the fund created by this
16 section shall be credited to that fund. "

17 Section 7. Section 33-1-19 NMSA 1978 (being Laws 1990
18 (1st. S.S.), Chapter 5, Section 2, as amended by Laws 1995,
19 Chapter 43, Section 1 and also by Laws 1995, Chapter 215,
20 Section 4) is amended to read:

21 "33-1-19. USE OF [FUNDS] FUND. -- [A.] The [~~funds created in~~
22 ~~or pursuant to Section 33-1-18 NMSA 1978~~] corrections department
23 building fund shall be used by the corrections department [~~or~~
24 ~~the board of finance~~] solely for the purpose of acquiring
25 [~~designing, constructing or equipping~~] by lease or [~~lease-~~

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1 ~~purchase, or by financing the ownership by the corrections~~
2 ~~department through the issuance of bonds or other obligations by~~
3 ~~the corrections department or the board of finance, or] other~~
4 means a corrections department central office complex, a
5 personnel training academy, a special incarceration alternative
6 facility [~~correctional facilities~~] or any combination of these
7 facilities. [~~and for paying the expenses relating to the lease,~~
8 ~~lease purchase or financing of these facilities. Before any of~~
9 ~~the funds created in Section 33-1-18 NMSA 1978 may be used for~~
10 ~~any such purpose, the state board of finance shall approve the~~
11 ~~proposed facility and the proposed use of the funds.~~

12 B. ~~The funds created in or pursuant to Section~~
13 ~~33-1-18 NMSA 1978 shall be used so that available appropriations~~
14 ~~are devoted to the following projects:~~

15 (1) ~~payment for the corrections department~~
16 ~~central office complex;~~

17 (2) ~~a correctional facility in Guadalupe county~~
18 ~~of not less than five hundred fifty and not more than two~~
19 ~~thousand two hundred beds;~~

20 (3) ~~a correctional facility in Lea, Chaves or~~
21 ~~Santa Fe county of not less than one thousand two hundred and~~
22 ~~not more than two thousand two hundred beds; and~~

23 (4) ~~design and construction of a support~~
24 ~~services building, a laundry and an infirmary at the~~
25 ~~penitentiary of New Mexico in Santa Fe.~~

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1 C. ~~The use of funds designated in Subsection B of~~
2 ~~this section for a correctional facility in Guadalupe county and~~
3 ~~a correctional facility in Lea, Chaves or Santa Fe county is~~
4 ~~contingent upon construction of both facilities, so that one of~~
5 ~~the facilities shall not be constructed unless both of the~~
6 ~~facilities are constructed, as nearly as possible,~~
7 ~~simultaneously.~~

8 D.] Any balance at the end of any fiscal year in the
9 [special funds created in Section 33-1-18 NMSA 1978] fund that
10 [are] is not needed to pay leases, loans, bonds or other
11 financing instruments in that fiscal year may be appropriated by
12 the legislature for expenditure in succeeding fiscal years by
13 the corrections department for corrections purposes. "

14 Section 8. Section 33-3-1 NMSA 1978 (being Laws 1865-1866,
15 Chapter 19, Section 1, as amended) is amended to read:

16 "33-3-1. COMMON JAILS--OPERATION BY SHERIFF, JAIL
17 ADMINISTRATOR OR INDEPENDENT CONTRACTOR- -AUTHORITY TO CONTRACT
18 FOR CORRECTIONAL FACILITIES. - -

19 A. The common jails shall be under the control of
20 the respective sheriffs, independent contractors or jail
21 administrators as defined in Section 4-44-19 NMSA 1978 hired by
22 the board of county commissioners or other local public body or
23 combination thereof and [the same] shall be used as prisons in
24 the respective counties.

25 B. Contracts between local public bodies and private

Underscored material = new
[bracketed material] = delete

1 independent contractors for the operation or provision and
2 operation of a jail are specifically authorized by this section;
3 provided that prior to July 1, 1987, no more than two pilot
4 projects involving private independent contractors are
5 authorized in New Mexico pursuant to Section 33-3-26 NMSA 1978.

6 C. Contracts between local public bodies and
7 independent contractors are specifically authorized for the
8 operation or provision and operation of correctional facilities
9 intended to house any type of inmates on behalf of the
10 corrections department, the children, youth and families
11 department or an out-of-state jurisdiction or any special
12 program facility for such inmates, if the facility is authorized
13 pursuant to a contract between the department and the local
14 public body in which the facility is located."

15 Section 9. Section 33-3-27 NMSA 1978 (being Laws 1984,
16 Chapter 22, Section 18) is amended to read:

17 "33-3-27. JAIL AND CORRECTIONAL FACILITY AGREEMENTS--
18 APPROVAL--LIABILITY--TERMINATION--VENUE.--

19 A. No agreement with a private independent
20 contractor for the operation of a jail or a correctional
21 facility or for the incarceration of prisoners [~~therein~~] in the
22 jail or correctional facility shall be made for a period of more
23 than three years. Agreements binding on future governing bodies
24 for construction, purchase or lease of a jail facility for not
25 more than [~~fifteen~~] twenty-five years are [~~hereby~~] authorized.

Underscored material = new
[bracketed material] = delete

1 B. All agreements with private independent
2 contractors for the operation or provision and operation of
3 jails ~~[must]~~ or correctional facilities shall include a
4 performance bond and be approved in writing, prior to their
5 becoming effective, by the local government division of the
6 department of finance and administration and the office of the
7 attorney general. Disapproval may be based on any reasonable
8 grounds, including ~~[but not limited to]~~ adequacy or
9 appropriateness of the proposed plan or standards; suitability
10 or qualifications of the proposed contractor or his employees;
11 absence of required or desirable contract provisions;
12 unavailability of funds; or any other reasonable grounds
13 whatsoever, whether like or unlike the foregoing. No agreement
14 shall be valid or enforceable without ~~[such]~~ prior approval.

15 C. All agreements with private independent
16 contractors for the operation or provision and operation of
17 jails or correctional facilities shall provide for the
18 independent contractor to provide and pay for training for
19 jailers or correctional officers to meet minimum training
20 standards, which shall be specified in the contract, and shall
21 require that the independent contractor pay its correctional
22 officers wages and benefits that are comparable to the wages and
23 benefits paid by the county to county employees similarly
24 employed.

25 D. All agreements with private independent

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[bracketed material] = delete

1 contractors for the operation or provision and operation of
2 jails or correctional facilities shall set forth comprehensive
3 standards for conditions of incarceration, either by setting
4 them forth in full as part of the contract or by reference to
5 known and respected compilations of such standards.

6 E. All agreements with private independent
7 contractors for the operation or provision and operation of
8 jails [~~must~~] or correctional facilities shall be approved in
9 writing, prior to their becoming effective, by the risk
10 management division of the general services department.
11 Approval shall be conditioned upon contractual arrangements
12 satisfactory to the risk management division for:

13 (1) the contractor's assumption of all
14 liability caused by or arising out of all aspects of the
15 provision and operation of the jail or correctional facility;
16 and

17 (2) liability insurance covering the contractor
18 and its officers, jailers, employees and agents in an amount
19 sufficient to cover all liability caused by or arising out of
20 all aspects of the provision and operation of the jail or
21 correctional facility. A copy of the proposed insurance policy
22 for the first year shall be submitted for approval with the
23 contract.

24 F. All agreements with private independent
25 contractors for the operation or provision and operation of

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[bracketed material] = delete

1 jails or correctional facilities shall provide for termination
2 for cause by the local public body parties upon ninety days'
3 notice to the independent contractor. Such termination shall be
4 allowed for at least the following reasons:

5 (1) failure of the independent contractor to
6 meet minimum standards and conditions of incarceration, which
7 standards and conditions shall be specified in the contract; or

8 (2) failure to meet other contract provisions
9 when such failure seriously affects the operation of the jail or
10 correctional facility. The reasons for termination set forth in
11 this subsection are not exclusive and may be supplemented by the
12 parties.

13 G. Venue for the enforcement of any agreement
14 entered into pursuant to the provisions of this [act] section
15 shall be in the district court of the county in which the
16 facility is located or in Santa Fe county.

17 H. As used in this section, "correctional facility"
18 means a facility intended to house any type of inmates on behalf
19 of the corrections department, the children, youth and families
20 department or an out-of-state jurisdiction or any special
21 program facility for such inmates, if the facility is authorized
22 pursuant to a contract between the department and the local
23 public body in which the facility is located."

24 Section 10. EMERGENCY.--It is necessary for the public
25 peace, health and safety that this act take effect immediately.